

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

David Waylon Johnson, #12093-021,	)	C/A No. 3:09-2604-JFA-JRM
	)	
Petitioner,	)	
vs.	)	
	)	ORDER
M.M. Mitchel, Warden FCI Edgefield,	)	
	)	
Respondent.	)	
_____	)	

The *pro se* petitioner, David Waylon Johnson, brings this action pursuant to 28 U.S.C. § 2241 challenging the application of good time credits on his federal sentence.

The respondent filed a motion to dismiss and an order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion to dismiss. Petitioner did not respond to the motion.

The court then filed a second order on March 31, 2010 allowing the petitioner additional time to respond to the motion to dismiss. However, petitioner did not respond.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a Report and Recommendation wherein he suggests that this action should be dismissed for lack of

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

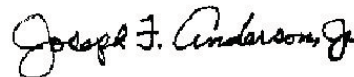
prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. In addition, the Magistrate Judge has considered the Fourth Circuit's four-prong test<sup>2</sup> in determining his recommendation that the action should be dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation which was entered on the docket on April 19, 2010. However, the petitioner did not file any objections to the Report within the time limits prescribed.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed for failure to prosecute under Fed.R.Civ.P. Rule 41(b).

IT IS SO ORDERED.

May 7, 2010  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge

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<sup>2</sup> See *Davis v. Williams*, 588 F.2d 69, (4th Cir. 1978); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982).